

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 915 of 1996

in

SPECIAL CIVIL APPLICATION No 4989 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHARDABEN WD/O NARANABHAI PRABHUDAS BRAHMBHATT

Versus

STATE OF GUJARAT THROUGH DYSECRETARY

Appearance:

MR JITENDRA M PATEL for Appellants
MR VB GHARANIA, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

Date of decision: 02/11/1999

ORAL JUDGEMENT (Per Panchal, J.)

1. By means of filing this appeal under Clause 15 of
the Letters Patent, the appellants have challenged

judgment dated July 16, 1996, rendered by the learned Single Judge in Special Civil Application No. 4989 of 1996, by which challenge to order passed by the Urban Land Ceiling Tribunal, Ahmedabad, declaring 1418.50 sq. metres of land as excess land, is negatived.

2. Appellant No.2, on behalf of himself and as guardian of minor as well as with Shardaben, who is widow of Naranbhai Prabhudas had filed statement under Section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 with reference to survey Nos.54, 55, 67/2 and 42/2, situated in village Bodakdev, survey Nos.384, 10/2/A and Gram Panchayat No.180 as well as 160 of village Thaltej as well as CTS No.6532 of village Shahpur. It was held by the Competent Authority by order dated May 12, 1995 that none of the appellants was holding any excess land. Though the order was passed in favour of the appellants, they were of the opinion that the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 were not applicable to the lands owned by them as they were agricultural lands. Under the circumstances, the finding recorded by the Competent Authority that the provisions of Urban Land (Ceiling and Regulation) Act, 1976 were applicable to the lands owned by the appellants was challenged before the Urban Land Ceiling Tribunal, at Ahmedabad. The appellate authority dismissed the appeal filed by the appellants and held that the appellants were in possession of excess land admeasuring 1418.50 sq. metres. That decision was challenged by the appellants in Special Civil Application No.4989 of 1996. The petition filed by the appellants was dismissed at the threshold by the learned Single Judge vide judgment dated July 16, 1996, giving rise to the present appeal.

3. The appellants had also filed Civil Application No.7350 of 1996 in Letters Patent Appeal No.915 of 1996 seeking stay of the execution, operation and implementation of order dated January 24, 1996, passed by the Urban Land Ceiling Tribunal in Land Ceiling Appeal No.Ahmedabad/50/95 by which land admeasuring 1418.50 sq. metres was declared as excess land. The Division Bench hearing the application had passed following on March 17, 1997 :-

"Rule. To be heard along with the main matter.

Status quo is ordered to be continued on the condition that the applicant will not dispose of, transfer or assign the land in question nor make any construction till the disposal of the appeal.

Sd/-

[C.K. THAKKAR, J.]

Sd/-

17.3.1997

[H.L. GOKHALE, J.]"

4. It may be mentioned that the Parliament has enacted the Urban Land (Ceiling and Regulation) Repealing Act, 1999, by which the Urban Land (Ceiling and Regulation Act, 1976 is repealed. Section 4 of the repealing Act provides that all proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act before any Court, Tribunal or other authority shall abate. The proviso to the said section specifies that Section 4 shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the Principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the Competent Authority. The record does not indicate that possession of the land which is declared to be excess land has been taken over by the State Government or by any other authority. The learned Assistant Government Pleader appearing on behalf of the State of Gujarat and other authorities is not able to point out to the Court that interim relief which was granted by the Court vide order dated March 17, 1997 in Civil Application No.7350 of 1996 is modified or varied subsequently in any manner. Thus, there is no manner of doubt that as on today, the appellants are in possession of the land which is declared to be excess. Under the circumstances, it will have to be held that the Letters Patent Appeal has abated. As the Letters Patent Appeal has abated, the same deserves to be disposed of accordingly.

5. For the foregoing reasons, it is held that the Letters Patent Appeal has abated. We make it clear that we have not pronounced upon legality or otherwise of the order which was subject matter of challenge by the appellants in the petition and it will be open to the appellants to point out to the Competent Authority that the proceedings have abated in view of the provisions of the Urban Land (Ceiling and Regulation) Repealing Act, 1999. The Letters Patent Appeal is dismissed as having abated with no orders as to costs.

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